

MINUTES
ZONING BOARD OF APPEALS
September 9, 2021 at 6:00 PM
at 15 Summer St- City Hall

Members Present roll call: Dennis Ackerman, Wayne Berube, Craig Faria, George Moniz, Scott Rodrigues and Bill Egan.

Meeting opens at 6:01 PM

Chairman Ackerman had a moment of silence in observance of the victims including Atty. Peter Gay from Taunton , of the September 11, 2021 attacks.

Chairman Ackerman explains the ZBA process. They hear presentation from petitioner, hear opposition and in favor and then go back to petitioner to answer any questions. They do not go back and forth.

Minutes of Case # 3635 Fillipovich 18 Briggs St.

For An Appeal of the Building Commissioner/ Zoning Enforcement Officer's letter relative to violation of Section 440-502 and Section 440-704 for the business use and off-street parking of commercial vehicles and trailers in an Urban Residential District.

For the Petitioner: Atty. Robert Fredericks, P.O. Box 165 , Taunton, Ma.
Frank Pagliuca, 98 Highland Ave., Taunton, Ma.

For the City: Robert Pirozzi, Building Commissioner, 141 Oak St., Taunton, Ma.
Atty. Thomas Gay, Jr., Special Asst. City Solicitor, Law Dept., 15 Summer St., Taunton, Ma.

Opposed: None

In favor: Steve Duarte, 32 Briggs St., Taunton, Ma.
John Joyce, 1194 Somerset Ave., Taunton, Ma.
John Urzua, 21 Briggs St., Taunton, Ma.
Diane DeMelo, 19 Briggs St., Taunton, Ma.
Nick Hammond, 14 Briggs St., Taunton, Ma.
Petition signed by 33 abutters in favor.

Atty. Fredericks representing Tom Fillipovich, Jr. who run a landscaping business in a residential area. He received a notice from the Building Commissioner informing him he is in violation of the zoning ordinance because he's running a landscaping business and parking commercial vehicles at the site. Atty. Fredericks points out that in 1977 there was a golf cart business at this location with small engine repair. Since 1977 the property has been consistently used for commercial purposes. Mr. McMorro repaired golf carts, small engine repair and parked vehicles on the premises. Chairman Ackerman asked if

he did any landscaping and it was answered yes. Atty. Fredericks states this use is a grandfathered per section 40 section 6. He stated the City's has been taxing the property and there was a reduction of taxes in 2021. He stated for 40 plus years they have been paying commercial taxes. He stated there has been no change of use as Mr. McMorrow used the premises for commercial. There is no detriment to the neighborhood. If there was a change of use the case laws states you have to determine if the use is substantially more detrimental than what was there before. He states it's less detrimental if the Board chooses to find it's a change of use. Frank Pagliuca, 98 Highland Ave. was called to testify on behalf of petitioner. He states out of the 55 of his 70 years he has lived next door and Mr. McMorrow was a mechanic who repaired golf carts, and worked on cars. After he left Tom took over and put his business there and everything was fine. Tom is an outstanding citizen and helps the neighborhood. Chairman Ackerman asks if in addition to car repairs and lawn mower repairs did Mr. McMorrow also do some landscaping and it was answered yes. Wayne asked Mr. Pagliuca that for the past 55 years there has been a business there and Mr. Pagliuca answers yes. Steve asked what is there now and Tom F. answers landscaping and he maintains golf courses. George stated Tom runs a professional business. Steve acknowledges he has a lot of neighborhood support. He's a good neighbor. In favor: Steve Duarte, 22 Briggs St., states Tom is a professional and is a great neighbor. Diane DeMelo, 19 Briggs St. states Tom is a wonderful neighbor. John Joyce, 1194 Somerset Ave. stated there has been a business at this location for decades and Tom is an active member of the community, good businessman and good neighbor. The business has been running out of this location for years without any complaints. John Urzua, 21 Briggs T., stated Tom uses his equipment to help neighborhood and he takes pride in his business. Nick Hammond, 14 Briggs St., is in support of the business. Chairman Ackerman disclosed that the petitioner has done work for the remodeling committee for the church he belongs to but he does not have any conflict since he's not on that board. He talked to Atty. Matthew Costa of the Law Dept. and says he can vote. Opposed: Atty Tom Gay, Jr., Law Dept. and Robert Pirozzi, Building Commissioner was invited in. Atty. Gay first stated this is not any disrespect to the petitioner but they had to respond to a complaint. Atty. Gay agrees with the City Planner's letter showing there was an expansion of a pre-existing non-conforming use in a residential district. There are aerial photos showing the expansion. They had no zoning approval and need to come to the board for approval. He's not satisfied there is a grandfathered use. The argument that they have paid taxes all these years is not proof. The assessor's tax you on what the property is being used for and that does not mean the use is permitted. Mr. Pirozzi first stated he has nothing against the petitioner. A written complaint was made and he has to investigate it. The complaint consisted of the business has been going on for some time, machines running, 3 trucks and the traffic has increased. There is no proof the business has been in existence prior to 1964 when zoning was enacted. He stated even if it did exist prior to 1964 it's clearly seen on the photos presented by the City Planner that the use has expanded. The pictures show the property fairly clean in 1999 and you can see an expansion over the years. Wayne asked who complained? Mr. Pirozzi stated it was a written complain signed by a concerned citizen. Chairman Ackerman stated he thought the city's policy was if it wasn't signed it should be ignored. Atty. Gay stated Bob is the Zoning Enforcement Officer and it's his obligation to look into an alleged violation whether the complaint is signed or not. Atty.

Gay stated Bob did his job. Chairman Ackerman stated he knows Bob is compassionate, reasonable and lenient and it's nothing against Bob. Chairman Ackerman reads dept. comments from the Water, Conservation Commission, B.O.H and he stated Atty. Gay basically paraphrased the City Planner's letter into the record when he gave his presentation. Atty. Gay states the board needs to determine if it's a grandfathered use and it has not expanded. He does not believe there is evidence to prove that. Steve points out Mr. Pirozzi is a first class guy and he knows he's only doing his job. Wayne agrees. Wayne stated testimony is that Mr. McMorrow ran a business out of this location for many years. Atty. Fredericks stated there is no evidence or pictures from 1964 showing there was not a business there. Mr. Pagliuca stated there was storage in backyard towards the edge of the swamp. Chairman Ackerman stated there needs to be 3 votes in favor to pass. Letter from Mike Binda, no against or in favor. Wayne stated the evidence is consistent with the use being there prior to 1964 without expansion.

Motion made and seconded to Grant the Appeal.

Vote: Ackerman, Berube, Moniz, Vieira, Faria,.....Yes
Appeal granted. Building Commissioner's letter not upheld.

Case # 3632

Lambert

248 Hart St. & 94-135

For: A Variance from Section 440 attachment # 3 of the Zoning Ordinance for the division of a lot that has merged for zoning purposes. Lot 94-135 (lot 2) having 15,322 sq. ft. of lot area & dry area (instead of 30,000 sq. ft. lot area & 22,500 sq. ft. dry area) width 105 feet of frontage (instead of 125 feet)

For the Petitioner: Atty. Dan deAbreau, 174 Dean St., Unit B, Taunton, Ma.

In favor: None

Opposed: None

Atty. deAbreau stated the petitioner has owned the property since 2012 which straddles two zoning districts. If both lots were in the urban residential district they would not need zoning relief. They are proposing to divide the lot as it has merged for zoning purposes. They are proposing to divide the lot along the zoning district lines. Steve asked if there is sewer available and it was answered it's on Hart Street but they may put septic system in. Wayne asked what is the petitioner's intention for lot 2 and it was answered he will sell it to a developer. It was asked if restricting it to a single family would it be an issue and it was answered no. Chairman Ackerman read dept. letters from the City Planner, Conservation Commission, Water, B.O.H. and Engineer. Public Input: no one in favor or opposed.

Motion made and seconded to grant with the following conditions:

1. Restricted to single family only.

Vote: Ackerman, Berube, Faria, Moniz, Vieira.....Yes
Petition Granted

Case # 3633 Antunes 104 High St.
For: A Special Permit from Section 440-503 of the Zoning Ordinance for the conversion of a pre-existing non-conforming two-family dwelling to a three-family dwelling in an Office District .

For the Petitioner: Atty. Karl Stammen, 100 Federal St., Ste. 1900, Boston, Ma.
In favor: None
Opposed: None

Atty. Stammen stated in 2004 the zba granted approval for a 3 family use and unfortunately a Certificate of Occupancy was never obtained. His client purchased the house in May 2019 as a 3 family but now need to legalize it. So now they must re-apply for the same relief. The house is already set up for a 3 family use and has plenty of parking on site and abuts many multi-family dwellings. Steve asked if it's currently used as a 3 family and it was answered yes because the petitioner bought it as such. Chairman Ackerman read dept. comments from the City Planner, Conservation Commission, Water, B.O.H and Engineer. Public Input: No one in favor or opposed.

Motion made and seconded to grant with the following condition:

1. Parking spaces to be striped.

Vote: Ackerman, Berube, Faria, Moniz, VieiraYes
Petition Granted

Case # 3634 Campanirio 110 North Walker St.
For: A Variance from Section 440- 602 of the Zoning Ordinance to allow two dwelling structures on one lot.

For the Petitioner: Kathleen Campanirio, 110 North Walker St. Taunton, Ma.
In favor: None
Opposed: Atty. Richard Burke, representing Maureen Jenkins, 106 No. Walker St., Taunton, Ma.

Mrs. Campanirio stated she has owned the property since 1966 and she is here tonight to request to have 2 dwellings on one lot. This is for her son's father to live close by in the manufactured home. They were informed by the City Planner that due to the language in the earlier variance they needed to request further approval to use the manufactured home as a living unit. Back in 1966 they moved there and there was a passageway between 106 & 110 North Walker Street and it has been used in a manner by Ted Thayer for his trucks

and vehicles for bailing hay in the backland. Mrs. Campanirio stated her relationship with her neighbor Mrs. Lawlor was that of her father fell off chair and she went over to help being a nurse and she was kicked out. That began their hostile relationship. In 1979 she received ZBA approval for a manufactured home to be put on her property for her parents to live. The only one in opposition was Mrs. Lawlor. In 1981 they went to court because Mrs. Lawlor placed a steel barrier on the passageway. They got an injunction. In 1985 they received zba approval which had an expiration date of 5 years. They spoke to the ZBA Chairman Marty Newfield at that time and asked what they needed to do and he said they put that language in the variance in case there was any problems. She has since learned they don't use that language anymore. We never had any complaints and it was quiet until 2008 when they went before zba to divide the property and neighbor (Lawlor) appealed and won in court. One of her complaints is a fire truck would shake her house if they drove down passageway. She said if we stopped using the passageway she would stop fighting and stop appeals. Mrs. Campanirio stated the neighbor now is taking pictures of vehicles who use the passageway and asking why are they there. They have never had 2 people in the passageway at one time. When they tried to shave the rock Mrs. Lawlor stood on the rock and the police were called. The passageway is made up of composite gravel and she has plowed when the manufactured home was occupied and picked up twigs. She stated they thought she was going to install gas down the passageway and she said she was not. She does have water, power and cable going to the manufactured home. She spoke to Mrs. Lawlor and her statement was "You have to learn to live with what you have". The manufactured home has been there for 42 years and they wish to remodel to allow Roger to live there. Mrs. Campanirio stated Mrs. Lawlor's hostility towards her has been passed on to another generation. Roger is 79 years old and he wants to live close to his sons. Wayne stated the opposition states it's unsafe for them to use passageway so is it unsafe for neighbor to use it? Chairman Ackerman read dept. comments from the City Planner, Water, Conservation Agent, B.O.H., Engineer, and Chairman of Conservation Commission. Letter from Atty. Burke in opposition representing Maureen Jenkins. Public Input: No one in favor. Opposed Atty. Richard Burke rep. 106 N. Walker St. Maureen Jenkins,. Ms. Jenkins inherited the property from Janice Lawlor. He's sympathetic to petitioner who wants to live close to family but that is not the legal standard for granting a variance. He stated in 1979 a variance was granted for a 2nd house to be on the property for petitioner's parents to reside with a 5 year restriction which was very clear. Unfortunately they did not remove it and it was not legal. In 2008 the ZBA granted approval for the division of the lot into two lots and Mrs. Lawlor appealed and won. Atty. Burke stated in 2008 the mobile home was not being used as a residence because it was illegal. It's essentially a shed on the property because it has not been used as a residence for some time. He asked why don't they do a conventional 2 family dwelling. The passageway is only 9 feet in width and is safe for one house to use but not two houses. It's not wide enough for 2 cars to pass at one time. It's not safe for fire trucks to travel down. In 2008 two members who are still on the Board voted for it. His client appealed and lost then went to Mass. Appeals court and ultimately won. In essence it's the same case, by allowing 2 dwellings on one lot and allowing using the passageway for the back residence is simply unsafe. They have no legal right to a variance. There is no hardship. Steve stated so between 1979 and 1984 it was safe and

now it's unsafe? Steve asked who has rights to the passageway? There is now conservation land in back and Atty. Burke stated there is a prescriptive easement allowing both parties to use. Neither party owns it. Craig says the addition of one car using this passageway is a detriment? So if 106 N. Walker Street has company and they use the passageway it's one more car so it's a detriment. Atty. Burks says it's magnifies the traffic on the passageway. Chairman Ackerman has been on the board for many years and he finds there is a hardship relative to topography and the ledge and he conservation land in back. This board takes into consideration the conservation land in back. We look at each case on its own merits and they abided by the law in not living there and now they are seeking approval to live there. He stated he talked to a few engineers on how much traffic would be generated by one house and it was indicated about 4 trips per day. That is the standard of traffic for one house. He stated he went out there and saw 3 cars at 106 North Walker Street. Atty. Burke stated the Board needs to look at the merits of the case and the court looked at it and they said a variance was not warranted. Steve suggests putting a restriction that there shall be no increase in footprint. Mrs. Campanirio stated the existing manufactured home is 14 feet wide by 90 feet long with a sun porch and garage. Steve pointed out between 1970 and 1984 petitioner's parents lived there and it was safe then. Chairman Ackerman stated the hardship is the topography and conservation land in back.

Motion made and seconded to grant with the following conditions:

1. There shall be no increase in footprint to the existing mobile/manufactured home. This approval is for the existing manufactured home to remain on site only.

Vote: Ackerman, Berube, Moniz, Faria, VieiraYes
Petition Granted

Chairman Ackerman stated the petitioner has the right to use the passageway and he is going to contact the Conservation Commission to proceed to contact a local contractor to use new modern method to shave or cut the stone/rock to enable city vehicles to access the conservation land in back.

Case # 3636 MRH Holdings, LLC Stanley Ave. 54-350
For: **A Variance from Section 440 Attachment #3 of the Zoning Ordinance for the development of a lot having zero feet of frontage (instead of 100 feet) on premises situated on Stanley Avenue, property I.D. 54-350**

For the Petitioner: Atty. Brianna Correia, 123 Broadway, Taunton, Ma.

In favor: None

Opposed: Wayne Hopkins, 15 Horton St., Taunton, Ma.

Atty. Correia stated the Board granted zoning relief for 70 feet of frontage and then they went to the Planning Board for a Roadway Improvement Plan. During that meeting P.B.

Vice Chairman Bob Campbell suggests trying to obtain a variance for zero feet of frontage instead doing roadway improvement plan. His reasons was by doing the road improvements it will disrupt the neighborhood in taking all tree down. There are railroad tracks along this property and he thought having as many trees as buffer would be good for the neighborhood. Atty. Correira stated having just a driveway off the street is less impervious area and less exposure for the neighborhood. She pointed out in the City Engineer's letter he's requiring an emergency turnaround and she stated this is a private driveway so that will not be needed. They went to the Conservation Commission in April and now will need to go with the new proposal and get a Request for Determination. Chairman Ackerman read dept. comments from the City Planner, Conservation Commission, Water, B.O.H and Engineer. Public Input: No one in favor. Opposed: Wayne Hopkins, 15 Horton St. stated he has frontage on Stanley Avenue too and has concerns with the water running down the street. He stated whey they built 15 & 22 Stanley Ave. the City put a pipe under the road across from Stanley Avenue. He stated the house next to him had water in foundation. They have sump pumps and rip rap. He thinks the water is coming from 22 Stanley Ave. and he doesn't think there is any drainage in the street. Chairman Ackerman suggested he contact the water and sewer dept. Mr. Hopkins says there is a 20 feet wide by 150 feet long swale. Chairman Ackerman said when they apply for a building permit they have to show the City Engineer that there will be no more water run off that what exists.

Motion made and seconded to grant with the dept. comments excluding the turnaround in City Engineer's letter :

1. A sewer extension plan will be required.
2. City Water is available from the existing 6" city water on Stanley Avenue.
3. Plans are required and need to be submitted to DPW for water services, gate valves, and curb stops.
4. DPW Permits are required including: City licensed contractor, road opening, and or trench.
5. DPW specifications apply including: pressure testing, materials, installation, new water meter with an updated radio frequency unit, inspection, and approval.
6. Prior notice is require before any city water work is to be performed, and inspections will be required before backfilling.
7. An accurate plan showing the wetlands and buffer zones must be used because there are wetlands in the vicinity of this property.
8. The proposed dwelling must be serviced by municipal water and sewer. All dwellings must comply with the minimum Standards of Fitness for Human Habitation, State Sanitary Code, Chapter II

Vote: Ackerman, Berube, Moniz, Rodrigues, EganYes
Petition Granted

Case # 3637

Earley

128 E. Water St.

For: A Special Permit from Section 440 503 (d) of the Zoning Ordinance for the extension of a pre-existing non-conforming single family dwelling by allowing an 34' x 33' addition for a 3 family use having a 6.2' side setback (instead of 15 feet)

For the Petitioner: John DeSousa, NorthCounty Group, 4 Court St., Taunton, Ma.

In favor: None

Opposed: None

John stated they are here to add on the pre-existing non-conforming 2 family dwelling by adding a 34' x 33 addition. John stated he has made a revision to the plan by moving the proposed addition which now meets the sideline setback. The property has 17,192 sq. feet of lot area and 78' of frontage and has a 2 family dwelling. Wayne stated now the addition is complying to the 15 foot side setback and John answers yes. The main house is a 2 ½ story house and the addition will be a single floor unit. The Secretary informed the petitioner that since they moved the addition to comply with the setback they don't need zoning relief. They now need to go to the Planning Board for a Special Permit for a 3 family Use. John thought he needed a variance for frontage and it was stated it's already existing. John Joyce, 1194 Somerset Avenue just wanted to bring to the Board's attention under dwelling conversion ordinance you cannot add on with within 5 years of receipt of a building permit. The Board will check with the City Planner to see if this section applies. It was suggested continuing to see if they even need any zoning relief anymore since they moved the addition.

Motion made and seconded to grant continuance.

Vote: Ackerman, Berube, Moniz, Vieira, Faria,.....Yes

Petition cont'd. to Oct. 28th meeting.

Case # 3638

Saxonis

110 Belmont St.

For:: A Variance from Section 440-attachment #3 of the Zoning Ordinance for conversion of a 3 family dwelling to a 4 family dwelling on a lot having 13,000 square feet (instead of 43,560 sq. ft.)

For the Petitioner: John DeSousa, NorthCoutty Group, 4 Court St., Taunton, Ma.

In favor: None

Opposed: James Park, 8 Ashland Place, Taunton, Ma.

John stated they are here tonight to convert the first floor into 2 apartments resulting in a 4 family use. He's aware he needs to go to the Municipal Council for a Special permit for a 4 family use. They have building permits for renovations and to put sprinkler in. There will be no exterior work and they have 8 parking spaces. The renovation permit is to re-do the bathrooms and put sprinkler in. Steve asked if there is sewer there and it was answered yes. Chairman Ackerman read dept. comments from the City Planner, Conservation Commission, Water, B.O.H and Engineer. Public Input: No one in favor. Opposed; letter from James Clark, 8 Ashland Place was read into the record Steve asked

what's the ratio on how it's going to be split. John answers 2/3 for 1 apartment and 1/3 for other unit. John says the lot coverage is 56%. George asked how big will be apartments be? John answers the larger unit will have kitchen, living room, bath, 2 bedrooms, and the front unit will be one bedroom, kitchen, bath, and living room.

Motion made and seconded to grant as presented:

Vote: Ackerman, Berube, Faria, Moniz, VieiraYes

Petition Granted

Case # 3639

Amaral

1685 R Bay St.

For:: A Variance from Section 440-attachment #3 of the Zoning Ordinance for conversion of a 3 family dwelling to a 4 family dwelling on a lot having 13,000 square feet (instead of 43,560 sq. ft.)

For the Petitioner: Atty. William Rounds, 115 Broadway, Taunton, Ma.

In favor: Rick & Karen Riendeau, 125 Goward Rd., Taunton, Ma.

Donna Nadeau, 1675 Bay St, Taunton, Ma.

Gerard O'Bara, 1683 Bay St., Taunton, Ma.

Judith Sypek & Sandra Amaral, 1709 Bay St., Taunton, Ma.

Jeffrey Sypek, 1685 Bay St., Taunton, Ma.

Robert Goddard, 1675 Bay St., Taunton, Ma.

Opposed: None

Atty. Rounds states they are here tonight to divide the property into two lots. The property is a little over 12 acres and has frontage on a private way known as Goward Road located off Bay St. There are a number of houses on Goward Road that access via Bay Street. The unique conditions include the large size, long shape and wetlands and frontage on Lake Sabattia. They have more than enough dry area for one single family house. If we don't get zoning relief the rest of the land is unusable. They will meet all setbacks and one house will not overburden the ROW. Atty. Rounds submits letters of support from abutters. Chairman Ackerman read dept. comments from the City Planner, Conservation Commission, Water, B.O.H and Engineer. Public Input: Rick & Karen Riendeau, 125 Goward Rd., Donna Nadeau, 1675 Bay St., Sandra Amaral, 1709 Bay St., Jeff Sypek, 1685 Bay St., and Robert Goddard, 1675 Bay St. The proposal is to give the new lot son to build house.

Motion made and seconded to grant with the following conditions:

1. Restricted to single family dwelling.
2. No further subdivision of the lots.

Vote: Ackerman, Berube, Faria, Moniz, VieiraYes

Petition Granted

Meeting adjourned at 9:00 PM

